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CASES OF TREASON.

Written
BY SIR FRANCIS BACON,
KNIGHT,

His MAJESTIES Soli-
citor Generall.



LONDON,
Printed by the Assignes of JOHN MORE,
and are sold by *Matthew Walbancke*, and
William Coke. Anno 1641.

CASES

OF

TREASON

WITH

BY SIR FRANCIS BA.

CON. KNIGHT

OF M.A. &c.

OF THE



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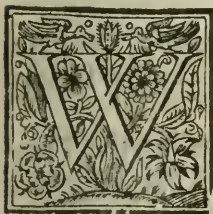
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CASES



CASES OF TREASON.

CHAP. I.



Here a man doth compasse or imagine the death of the King, the Kings Wife, the Kings eldest Sonne, and Heire apparent, if it appeare by any overt act, it is Treason.

Where a man doth violate the Kings Wife, the Kings eldest daughter, unmarried, the Wife of the Kings eldest Sonne, and Heire apparent, it is Treason.

B

Where

Where a man doth levie warre against the King in the Realme, it is Treason.

Where a man is adherent to the Kings enemies, giving them aid and comfort, it is Treason.

Where a man counterfeiteth the Kings great Seale, privie Signet, Signe manuell, it is Treason: likewise his money.

Where a man bringeth into this Realme false money, counterfeited to the likenesse of English, with intent to merchandize or make paiement thereof, and knowing it to be false money, it is Treason.

Where a man counterfeiteth any coyne currant in payment within this Realme, it is Treason.

Where a man doth bring in any money being currant within the Realme, the same being false and counterfeit, with intent to utter it, and knowing the same to be false, it is Treason.

Where a man doth clipp, waste, round, or file any of the Kings money, or any forraigne coyne, currant by Proclamation, for gaines sake, it is Treason.

Where a man doth any way impaire, diminish, falsifie, skale or lighten money currant by Proclamation, it is Treason.

Where a man killeth the Chancellor, the Treasurer, the Kings Justices in *Eire*, the Kings Justices of Assises, the Justices of *Oyer* and *Terminer*, being in their severall places, and doing their Offices, it is Treason.

Where a man procureth or consenteth to Treason, it is Treason.

Where

Where a man doth perswade or withdraw any of the Kings Subjects from his obedience, or from the Religion by his Majestie established, with intent to withdraw any from the Kings obedience, it is Treason.

Where a man is absolved, reconciled, or withdrawne from his obedience to the King, or promiseth obedience to any forraigne Power, - it is Treason.

Where any Jesuite, or any other Priest ordained since the first yeere of the reigne of *Queene Elizabeth*, shall come into, or remaine in any part of this Realme, it is Treason.

Where any person being brought up in a Colledge of Jesuites, or Seminaries, shall not returne within six moneths after Proclamation made, and within two dayes after his returne, submit himselfe to take the oath of Supremacy, if otherwise hee doe returne, and not within sixe moneths after Proclamation made, it is Treason.

Where a man committed for Treason, doth voluntarily breake Prison, it is Treason.

Where a Jaylor doth voluntarily permit a man committed for Treason to escape, it is Treason.

Where a man relieveth or comforteth a Traitor, and knoweth of the Offence, it is Treason.

Where a man doth affirme or maintaine any Authority of Jurisdiction spirituall, or doth put in ure or execute any thing for the advancement or setting forth thereof, the third time, it is Treason.

Where a man refuseth to take the oath of Supremacy,

premacie being tendered by the Bishop of the Diocese, if hee bee any Ecclesiasticall person ; or by Commission out of the Chancery , if hee bee a temporall person ; such Offence the second time is Treason.

CHAP. II.

The punishment, triall, and proceeding in cases of Treason.

IN Treason the corporall punishment is by drawing on a hurdle from the place of the prison to the place of execution, by hanging and being cut downe alive , bowelling and quartering, and in women, burning.

In Treason there ensueth a corruption of blood in the line ascending and descending.

In Treason, lands and goods are forfeited, and inheritances, aswell intailed as fee simple, and the profits of estates for life.

In Treason, the Escheats goe to the King, and not to the Lord of the Fee.

In Treason, the land forfeited shall bee in the Kings actuall possession without Office.

In Treason there be no accessaries , but all are principalls.

In Treason no Sanctuarie, nor benefit of Clergie, or peremptory challenge is allowed.

In Treason, if the party stand mute, yet nevertheless judgement and attainder shall proceed all one as upon verdict.

In

In Treason no Councell is to bee allowed, nor baile permitted to the partie.

In Treason no witnessses shall bee received upon oath for the parties justification.

In Treason, if the fact bee committed beyond the seas, yet it may bee tryed in any County where the King will award his Commission.

In Treason, if the party bee *non sana memoria*, yet if hee had formerly confessed it before the Kings Councell, and that it bee certified that hee was of good memory at the time of his examination and confession, the Court may proceede to judgement without calling or arraighning the party.

In Treason, the death of the party before conviction dischargeth all proceedings and forfeitures.

In Treason, if the parties bee once acquitted, hee should not bee brought in question againe for the same fact.

In Treason, no new case not expressed in the Statute of 25. E. 3. or made Treason by any speciall Statute since, ought to bee judged Treason, without consulting with the Parliament.

In Treason, there can be no prosecution but at the Kings suit, and the Kings pardon dischargeth.

In Treason, the King cannot grant over to any subject power and authority to pardon it.

In Treason, a triall of a Peere of the Kingdome is to bee by speciall Commission before the Lord high Steward, and those that passe upon him to be none but Peers: The proceeding is with great solemnity, the Lord Steward sitting under a cloth
of

of Estate with a white rod of Justice in his hand, and the Peeres may conferre together, but are not any wayes shut up ; and are demanded by the Lord Steward their voices one by one, and the plurality of voices carries it.

In Treason, it hath been an ancient use and favour from the Kings of this Realme to pardon the execution of hanging, drawing, and quartering ; and to make warrant for their beheading.

The proceeding in case of Treason with a common Subject is in the Kings Bench, or by Commission of *Oyer and Terminer*.

CHAP. III.

Cases of Misprision of Treason.

WHere a man concealeth high Treason onely, without any consorting or abetting, it is misprision of Treason.

Where a man counterfeiteth any forreigne coyne of gold or silver not currant in the Realme, it is misprision of Treason.

Where a man fixes an old Scale to a new Patent, it is misprision of Treason.

CHAP. IIII.

The punishment, tryall, and proceeding in cases of misprision of Treason.

THe punishment of Misprision of Treason is by perpetuall imprisonment, losse of the issues and profits

profits of their lands during life, and losse of goods and chattels.

The proceeding and triall is as in cases of high Treason.

In misprision of Treason baile is not admitted.

CHAP. V.

Cases of petie Treason.

WHere a Servant killeth his Master, the Wife the Husband, the spirituall man his Prelate, to whom hee is subordinate, and oweth faith and obedience, it is petie Treason.

Where a Sonne killeth the Father or Mother, it hath been questioned whether it be petie Treason, and the late experience and opinion seemeth to sway to the contrary, though against law and reason in my judgement.

Where a Servant killeth his or her Master or Mistresse after they are out of service, it is petie Treason.

CHAP. VI.

The punishment, tryall, and proceedings in cases of petie Treason.

IN petie Treason, the corporall punishment is by drawing on an hurdle, and hanging, and in a woman burning.

In petie Treason, the forfeiture is the same with the case of Felony.

In

In petie Treason, all Accessaries are but in case of Felonie.

CHAP. VII.

Cases of Felonie.

WHere a man committeth murder or homicide of malice prepenſed, it is felony.

Where a man committeth murder (that is) breaking of an house with an intent to commit felony, it is felony.

Where a man committeth manslaughter, that is homicide of sudden heate, and not of malice prepenſed, it is felony.

Where a man rideth armed with a felonious intent, it is felony.

Where a man doth maliciously and feloniously burne any mans house, it is felony.

Where a man doth maliciously &c. burne corne upon the ground, or in stack, it is felony.

Where a man doth maliciously cut out another mans tongue, or put out his eyes, it is felony.

Where a man robbeth or stealeth, *viz.* taketh away another mans goods, above the value of 12. d. out of his possession, with intent to conceale it, it is felony.

Where a man imbezileth and withdraweth any of the Kings Records at Westminster, whereby a judgement is reversed, it is felony.

Where a man having the custody of the Kings Armour, Munition, or other Abiliments of Warre, doth

doth maliciously convey away the same, it is felony, if it be to the value of 20. shillings.

Where a Servant hath goods of his Masters, delivered unto him, and goeth away with them, it is felony.

Where a man conjures, or invokes wicked Spirits, it is felony.

Where a man doth use or practise witchcraft, whereby any person shall bee killed, wasted, or lamed, it is felony.

Where a man practiseth any witchcraft, to discover treasure hid, or to discover stolne goods, or to provoke unlawfull love, or to impaire or hurt any mans cattell or goods the second time, having been once before convicted of like offence, it is felony.

Where a man useth the craft of multiplication of gold or silver, it is felony.

Where a man receiveth a Seminary Priest, knowing him to bee such a Priest, it is felony.

Where a man taketh away a woman against her will, not clayming her as his ward or bondwoman, it is felony.

Where a man or woman marrieth againe, his or her former husband or wife being alive, it is felony.

Where a man committeth buggery with man or beast, it is felony.

Where any persons, above the number of twelve, shall assemble themselves with intent to put downe inclosures, or bring down prices of victuals, &c. and do not depart after proclamation, it is felony.

Where a man shall use any words to encourage or draw any people together, *ut supra*, and they doe assemble accordingly, and doe not depart after proclamation, it is felony.

Where a man being the Kings sworne servant, conspireth to murder any Lord of the Realme, or any privie Councillor, it is felony.

Where a Souldier hath taken any parcell of the Kings wages, and departeth without licence, it is felony.

Where a Recusant, which is a seducer, and perswader, and enciter of the Kings subjects against the Kings Authority in Ecclesiasticall causes, or a perswader of Conventicles, or shall refuse to abjure the Realme, it is felony.

Where vagabonds bee found in the Realme, calling themselves Egyptians, it is felony.

Where a Purveyor doth take without warrant, or otherwise doth offend against certaine speciall Lawes, it is felony.

Where a man hunts in any Forrest, Parke, or Warren, by night or by day, with vizzard or other disguisements, and is examined thereof and conceales his fact, it is felony.

Where one stealeth certaine kinde of Hawkes, it is felony.

Where a man committeth forgery the second time, having been once before convicted, it is felony.

Where a man transporteth Rammes or other sheepe out of the Kings Dominions the second time, it is felony.

Where

Where a man being imprisoned for felony breaks prison, it is felony.

Where a man procureth or consenteth to felony to bee done, it is felony, as to make him accessary before the fact.

Where a man receiveth or relieveth a felon, it is felony, as to make him accessary after the fact.

Where a woman, by the constraint of her husband, in his presence, joyneth with him in committing of felony, it is not felony in her, neither as principall, nor as accessary.

Homicide, or the killing
of a man is to bee considered in foure kindes,

Chance-medley.

Se defendendo.

Manslaughter.

Wilfull Murder.

CHAP. VIII.

The punishment, tryall, and proceedings in cases of Felonie.

IN felony, the corporall punishment is hanging, and it is doubtfull whether the King may turn it into beheading in the case of a Peer, or other person of dignity, because in treason the striking off the head is part of the Judgement, and so the King pardoneth the rest: but in felony, it is no part of the judgement, and the King cannot alter the execution of law; yet presidents have beene both wayes: If it

bee upon indictment, the King may, but upon an appeale hee cannot.

In felony there followeth corruption of bloud, except it bee in cases made felony by speciall Statutes, with a proviso that there shall be no corruption of bloud.

In felony, lands in fee simple, and goods and chattels are forfeited, and the profits of estates for life are likewise forfeited, but not lands intailed: And by some customes lands in fee simple are not so forfeited;

The Father to the bough,

The Sonne to the Plough,

as in *Gavel-kinde*, in Kent, and other places.

In felony, the Escheats goe to the Lord of the Fee, and not to the King, except hee be Lord: But profits for the estates for lives, or in taile during the life of tenant in taile, goe to the King; And the King hath likewise *annum, & diem, & vastum*.

In felony, lands are not in the King before Office, nor in the Lord before entrie or recovery in a writ of Escheate, or death of the party attainted.

In felony, there can bee no proceeding with the accessary before there bee a proceeding with the principall: If hee die, or plead his pardon, or have his Clergie before attainder, the accessary can never be dealt with.

In felony, if the party stand mute, and will not put himselfe upon tryall, or challenge peremptorily above that the law allowes, hee shall have judgement not of hanging, but of penance of pressing to death;

death; but there he saves his lands and forfeits only his goods.

In felony, at the common law, the benefit of Clergie or Sanctuary was allowed; but now by Stat. it is taken away in most cases.

In felony, baile may be admitted where the fact is not notorious, and the person not of ill name.

In felony, no Councell is to bee allowed to the party, no more then in treason.

In felony, if the fact bee committed beyond the Seas, or upon the Seas, *super altum mare*, there is no tryall at all in one case, nor by course of Jury in the other, but by the Jurisdiction of the Admiralty.

In felony, no witnesse shall bee received upon oath for the parties Justification, no more then in treason.

In felony, if the party bee *non sane memoria*, although it bee after the fact, hee cannot be tryed nor adjudged, except it be in course of Outlawry, and that is also erroneous.

In felony, the death of the party before conviction dischargeth all proceedings and forfeitures.

In felony, if the party bee once acquit, or in perill of Judgement of life lawfully hee shall never be brought in question againe for the same fact.

In felony, the prosecution may bee either at the Kings suit, or by way of appeale; the defendant shall have his course, and produce witnesses upon oath, as in civill causes.

In felony, the King may grant hault justice to a subject,

subject, with the Regality of power to pardon it.

In felony, the tryall of Peeres is all one as in case of treason.

In felony, the proceedings are in the Kings Bench, or before Commissioners of *Oyer and Terminer*, or of Gaol delivery, and in some case before Justices of the Peace.

CHAP. IX.

Cases of Felony de se, with the punishment, triall, and proceedings.

IN the civill law, and other lawes, they make a difference of cases of felony *de se*; for where a man is called in question upon any capitall crime, and killeth himselfe to prevent the law, there they give the judgement in all points of forfeiture, as if they had beene attainted in their life time: And on the other side, where a man killeth himselfe upon impatience of sicknesse, or the like, they doe not punish it at all: but the law of England taketh it all in one degree, and punisheth onely with losse of goods to bee forfeited to the King, who generally grants them to his Almoner, where they bee not formerly granted unto speciall liberties.

CHAP. X.

Cases of Premunire.

V Here a man purchaseth or accepteth any provision, that is, collation of any spirituall benefice

benefice or living from the Sea of Rome, it is Premunire.

Where a man shall purchase any proces to draw any people of the Kings allegiance out of the Realme, in plea whereof the cognizance pertaines to the Kings Court, and commeth not in person to answer his contempt in that behalfe before the King and his Councell, or in his Chancery; it is Premunire.

VVhere a man doth sue in any Court which is not the Kings Court, to defeate or impeach any judgement given in the Kings Court, and doth not appeare to answer his contempt, it is Premunire.

VVhere a man doth purchase or pursue in the Court of Rome, or elsewhere, any processe, sentence of excommunication, bull, or instrument, or other thing which toucheth the King in his Regality, or his Realme in prejudice, it is Premunire.

VVhere a man doth affirme or maintaine any forraigne kinde of Jurisdiction spirituall, or doth put in ure or execution any thing for the advancement or setting forth thereof; such offence the second time committed is Premunire.

VVhere a man refuseth to take the oath of Supremacy being tendred by the Bishop of the Diocese, if it bee an Ecclesiasticall person; or by a Commission out of the Chancery, if it bee a temporall person, it is Premunire.

VVhere a Deane and Chapter of any Church upon the *Conge de Lien* of an Archbishop or Bishop doth refuse to elect any such Archbishop or Bishop

as

as is nominated unto them in the Kings Letters missive, it is Premunire.

Where a man doth contribute or give reliefe to any Jesuite or Seminary Priests, or to any person brought up therein, and called home, and not returning, it is case of Premunire.

Where a man is a Broker of an usurious contract above ten in the hundred, it is Premunire.

CHAP. XI.

The punishment, triall, and proceeding in cases of Premunire.

THe punishment is by imprisonment during life, forfeiture of goods, forfeiture of lands in fee simple, and forfeiture of the profits of lands intailed, or for life.

The triall and proceeding is as in cases of imprisonment of Treason, and the tryall is by Peers where a Peer of the Realme is the offender.

Striking any man in the face of the Kings Courts, is forfeiture of lands, perpetuall imprisonment, and losse of that hand.

CHAP. XII.

Cases of Abjuration and Exile, and the proceedings therein.

WHere a man committeth any felony, for the which at this day hee may have priviledge of Sanctuary, and confesseth the felony before the Coroner,

Coroner, he shall abjure the liberty of the Realme, and chuse his Sanctuary ; and if hee commit any new offence, or leave his Sanctuary, hee shall lose the priviledge thereof, and suffer as if hee had not taken Sanctuary.

Where a man not coming to the Church, and being a Popish Recusant, doth perswade any the Kings subjects to impugne his Majesties Authority in causes Ecclesiasticall, or shall perswade any subject to come to any unlawfull conventicles, and shall not after conforme himselfe within a time, and make his submission , hee shall abjure the Realme , and forfeit his goods and lands during life ; and if hee depart not within the time prefixed, or returne, hee shall bee in the degree of a Felon.

Where a man being a Popish Recusant, and not having lands to the value of 20. Marks *per annum*, nor goods to the value of 40. l. shall not repaire to his dwelling, or place where hee was borne, and there confine himselfe within the compasse of five miles, hee shall abjure the Realme ; and if he returne, he shall be in case of a Felon.

Where a man kills the Kings Deere in Chases or Forrests, and can finde no sureties after a yeeres imprisonment, he shall abjure the Realme.

Where a man is a trespasser in Parkes, or in Ponds of fish, and after three yeeres imprisonment cannot finde sureties, hee shall abjure the Realme.

Where a man is a Ravisher of any childe whose
D marriage

marriage belongs to any person, and marrieth the said childe after yeeres of consent, and is not able to satisfie for the marriage, hee shall abjure the Realme.

CHAP. XIII.

Cases of Heresie, and the triall and proceedings therein.

THe declaration of Heresie, and likewise the proceedings and judgement upon Hereticks is by the common lawes of this Realme referred to the Jurisdiction ecclesiasticall, and the secular arme is reached to them by the common Lawes, and not by any Statute for the execution of them by the Kings writ *de Haretico comburendo*.

CHAP. XIII.

The Kings Prerogative in Parliament.

THe King hath an absolute negative voyce to all Bills that passe the Parliament, so as without his royall assent they have a meere nullity, and not so much as *Authoritas praescripta*, or *Senatus consulta* had, notwithstanding the intercession of Tribunes.

The King may summon Parliaments, dissolve them, prorogue them, and adjourne them at his pleasure.

The King may add voyces in the Parliament at his pleasure, for hee may give priviledge to Borough Townes as many as hee will, and may likewise

wife call and create Barons at his pleasure.

No man can sit in Parliament except hee take the oath of Allegiance.

CHAP. XV.

*The Kings Prerogative in matters of Warre
or Peace.*

THe King hath power to declare and proclaime warre, and to make and conclude peace and truce at his pleasure.

The King hath power to make leagues and confederacies with forraigne States, more straight and lesse straight, and to revoke and disannull them at his pleasure.

The King hath power to command the bodies of his Subjects for the service of his warres, and to muster, traine, and levie men, and to transport them by sea or land at his pleasure.

The King hath power in time of warre to execute Marshall Law, and to appoint all Officers of warre at his pleasure.

The King hath power to grant his Letters of Mart and reprisall for remedy to his Subjects upon forraigne wrongs, at his pleasure.

The King hath power to declare Lawes by his Letters Patents for the government of any place conquered by his Armes, at his pleasure.

The King may give Knight-hood, and thereby enable any subject to performe Knights service, at his pleasure.

CHAP. XVI.

The Kings Prerogative in matters of moneys.

THE King may alter his standard in baseness or fineness of his coyne at his pleasure.

The King may alter his stampe in forme at his pleasure.

The King may alter the valuations of his coyne, and raise and fall moneys at his pleasure.

The King by his Proclamation may make monyes of his owne currant, or not currant, at his pleasure.

The King may take or refuse the Subjects bullion and coyne, more or lesse money.

The King by his Proclamation may make forreigne money currant, or not currant.

CHAP. XVII.

The Kings Prerogative in matters of Trade and Traffick.

THE King may constrain the person of any of his subjects not to goe out of the Realme at all.

The King may restrain any of his subjects to goe out of the Realme into any speciall part forreigne.

The King may forbid the exportation of any commodities out of the Realme.

The

The King may forbid the importation of any commodities into the Realme.

The King may set a reasonable Impost upon any forreigne wares that come into the Realme, and so of native wares that goe out of the Realme.

CHAP. XVIII.

*The Kings Prerogative in the persons of
his Subjects.*

THE King may create any Corporation or Bodie politick, and enable them to purchase, and grant, and to sue, and bee sued, and that with such restrictions and modifications as he pleases.

The King may denizen and enable any forreigner for him and his descendents after the Charter, though hee cannot naturalize nor enable him to make pedegree from Ancestors Paramount.

The King may enable any attainted person (by his Charter of pardon) to purchase, and to purge his blood for the time to come, though hee cannot restore his blood for the time past.

The King may enable any dead person in law, as men professed, to take and purchase to the Kings benefit.

CHAP.

CHAP. XIX.

An Answer to the Question proposed by Sir Alexander Hay Knight, touching the Office of Constables.

I. **T**O the first, Of the originall of the Authority of Constables, it may bee said, *Caput inter nubila condit*, for the Authoritie was granted upon the ancient Lawes and Customes of this Kingdome practised long before the Conquest, and intended and instituted for the conservation of the peace, and repressing of all manner of disturbance and hurt of the people, and that as well by way of prevention as punishment; but yet so, as they have no judiciable power, to heare and determine any cause, but onely a ministeriall power, as in the answer of the seventh Article more at large is set downe.

As for the Office of the High Constable, the originall of that is yet more obscure; for though the High Constables Authority hath the more ample circuit, hee being over the Hundred, and the petty Constable over the Village; yet I doe not finde that the petty Constable is subordinate to the High Constable, or to bee ordered or commanded by him: and therefore, I doubt, the High Constable was not *ab origine*, but that when the businesse of the Country increased, the authority of the Justices of peace was enlarged by divers Statutes,

tutes, then, for conveniencie sake the Office of High Constables grew in use for the receiving of the commands and precepts from the Justices of peace, and distributing them to the petie Constables; and in token of this, the election of High Constables in most parts of the Kingdome is by the appointment of the Justices of peace, whereas the election of the petie Constable is by the people.

But there bee two things unto which the Office of Constable hath speciall reference, and which of necessity, or at least a kind of congruity, must precede the Jurisdiction of that Office, either the things themselves, or somewhat that hath a similitude or analogie towards them.

1. The one is the division of the Territory, or grosse of the Shires into Hundreds, Villages, and Townes; for the High Constable is Officer over the Hundred, and the petie Constable is over the Towne or Village.

2. The other is the Court Leete, unto which the Constable is a proper attendant and minister, for there the Constables are chosen by the Jury, there they are sworne, and there that part of their Office which concerneth information is principally to be performed; for the Jury is to present offences, and the offenders are chiefly to take light from the Constables of all matters of disturbance and nuisance of the people, which they (in respect of their Office) are presumed to have best and most particular knowledge of.

CHAP. XX.

Three ends of the Institution of the Court Leete.

1. **T**He first end of the institution of the Court Leet is, To take the oath of Allegiance of all males above the age of twelve years.

2. The second, To enquire of all offences against the peace; and for those that are against the Crowne and Peace both, to enquire of onely, and certifie to the Justices of Gaole delivery; but those that are against the peace simply, they are to enquire and punish.

3. The third is, To enquire of, punish, and remove all publick nuisances and grievances concerning infection of Ayre, corruption of victuals, ease of chaffer, and contract of all other things that may hurt or grieve the people in generall, in their health, quiet, and welfare.

And to these three ends, as matters of policie subordinate, the Court Leet hath power to call upon the pledges that are to bee taken for the good behaviour of the residents that are not tenants, and to enquire of all defaults of Officers, as Constables, Ale-tasters, &c. and for choyce of Constables, as aforesaid.

The jurisdiction of these Leets is ever remaining in the King, and in that case exercised by the Sheriffe in his turne, which is the grand Leete,
granted

granted over to subjects ; but yet it is still the Kings Court.

2. To the second, as was said, The election of the pety Constable is at the Court Leet by the Inquest that makes the presentments ; the election of the head Constables is by the Justices of the peace at their quarter Sessions.

3. To the third, The Office is annuall, except they be removed.

4. To the fourth, They bee men (as it is now used) of inferiour, yea, of base condition, which is a meere abuse or degenerating from the first institution ; for the pety Constables in Townes ought to be of the better sort of resiants in the said Towne, save that they ought not to bee aged, or sickly, but men of able bodies in respect of the keeping watch and toyle of their place, neither ought they to be in any mans livery : And the high Constables ought to bee of the ablest sort of free-holders, and of the substantial'st sort of Yeomen, next to the degree of Gentlemen ; but they ought to bee such as are not incumbred with any other Office, as Maior, Under-sheriffe, Bailiffe, &c.

5. To the fifth, They have no allowance, but are bound by dutie to performe their Offices *gratis*, which may the rather be endured, because it is but annuall, and they are not tyed to keep or maintaine any servants or under-ministers, for that every one of the Kings people are bound to assist them.

6. To the sixth, Upon complaint made (of his refusall) to any one Justice of peace, the said Ju-

stice may binde him over to the Sessions, where (if hee cannot excuse himselfe by some just allegation) hee may bee fined and imprisoned for his contempt.

7. To the seventh, The authority of Constables, as it is substantive, and of it selfe, or substituted, and astricted to the warrants and commands of the Justices of peace; so again it is originall, or additionall; for either it was given them by the common Law, or else annexed by divers statutes. And as for subordinate power, wherein the Constable is onely to execute the commandements of the Justices of peace, and likewise the additionall power which is given by divers Statutes, it is hard to comprehend them in any brevitic; For that they doe correspond to the Office and Authority of the Justices of peace, which is very large, and are created by the branches of severall Statutes, which are things of divers and dispersed natures: But for the originall and substantive power of a Constable, it may be reduced to three heads:

1. For matter of peace onely.
2. For matter of peace and the Crowne.
3. For matter of nuisance, disturbance, and disorder, although they bee not accompanied with violence and breach of peace.

For pacifying of quarrels begunne, the Constables may upon hot words given, or likelihood of breach of peace to ensue, command them in the Kings name to keep the peace, and depart, and forbear: And so hee may where an affray is made,

part

part the same, and keepe the parties asunder, and arrest and commit the breakers of the peace, if they will not obey, and call power to assist him for the same purpose.

For punishment of breach of peace past, the law is very sparing in giving any authority to Constables, because hee hath no power judicall, and the use of his Office is rather for preventing or staying of mischiefe, then for punishing of offences; for in that part hee is rather to execute the Warrants of the Justices, or when sudden matter ariseth upon his view, or notorious circumstances, to apprehend offenders, and carry them before the Justice of peace, and generally to imprison in like cases of necessity, where the case will not endure the present carrying before the Justices. And thus much for the matters of peace.

For matters of the Crowne, the Office of the Constable consisteth chiefly in foure parts:

1. The first is Arrest.
2. The second is Search.
3. The third is Hue and Cry.
4. And the fourth is Seizure of Goods.

All which the Constable may performe of his owne authority, without any warrant of the Justices of peace.

1. For first, If any man will lay murder or felony to anothers charge, or doe suspect him of murder or felony, hee may declare it to the Constable, and the Constable ought upon such declaration or complaint, carry him before a Justice,

and if by common voyce or fame any man bee suspected, the Constable of duty ought to arrest him, and bring him before a Justice, though there be no other accusation.

2. If any house bee suspected for the receiving or harbouring of any felon, the Constable, upon complaint or common fame, may search.

3. If any flye upon the felony, the Constable ought to raise Hue and Crie, and search his goods, and keepe them safe without impairing, and to inventory them in the presence of honest neighbours.

4. For matters of common nuzance and grievance, they are of a very variable nature, according to the severall comforts which mans life and society requireth, and the contraries which infest the same.

In all which, bee it matter of corrupting ayre, water, or victuals, or stopping, straightning, or endangering passage, or generall deceits in weights, measures, sizes, or counterfeiting wares, and things vendible; the Office of the Constable is to give (as much as in him lies) information of them, and of the offenders in Leets, that they may bee presented, But because Leets are kept but twice in the yeere, and many of these things require present or speedy remedy, the Constable in things of notorious and vulgar nature, ought to forbid and repressse them in the meane time.

8. To the eighth, They are for their contempt

to bee fined and imprisoned by the Justices in their Sessions.

9. To the ninth: The Oath they take is in this manner.

“ You shall sweare , that you shall well and
“ truly serve the King, and the Lord of this Law-
“ day ; and you shall cause the peace of our Lord
“ the King to bee well and duely kept , to your
“ power : And you shall arrest all those that you
“ see committing riots , debates , and affrayes in
“ breach of peace : And you shall well and duely
“ endeavour your selfe to your best knowledge , that
“ the Statutes of *Winchester* for Watch, Huy and
“ Cry, and the Statutes made for the punishment of
“ sturdy beggars, vagabonds, rogues, and other
“ idle persons coming within your Office bee truly
“ executed, and the offenders punished : And you
“ shall endeavour, upon complaint made, to appre-
“ hend barreters and riotous persons making af-
“ fraies, and likewise to apprehend Felons ; and if
“ any of them make resistance with force and mul-
“ titude of mis-doers, you shall make out-cry, and
“ pursue them till they bee taken ; and shall looke
“ unto such persons as use unlawfull games ; and
“ you shall have regard unto the maintenance of
“ Artillery ; and you shall well and duely execute
“ all processe and precepts sent unto you from the
“ Justices of peace of the County ; and you shall
“ make good and faithfull presentments of all
“ bloudsheds, out-cries, affraies, and rescues made
“ within your Office ; and you shall well and duely,
according

“ according to your power and knowledge, do that
 “ which belongeth to your Office of Constable, to
 “ doe for this yeere to come. So help &c.

10. To the tenth, The authority is the same in substance, differing only in extent; The petty Constable serving onely for one Towne, Parish, or Borough, the head Constable serving for the whole Hundred; Neither is the petty Constable subordinate to the head Constable for any commandement that proceeds from his owne authority; but it is used, that the precepts of the Justices bee delivered unto the high Constables, who being few in number, may better attend the Justices, and then the head Constables, by vertue thereof, make their precepts over to the petty Constables.

11. To the eleventh, In case of necessity he may appoint a deputy, or in default thereof, the Steward of the Court Leet may; which deputy ought to bee sworn.

Now to conclude, the Office of Constables consists wholly in these three things; *viz.*

- | | |
|----------------------------|--|
| Their Office
concerning | { 1. The conservation of the peace.
2. The serving the Precepts and Warrants of the Justices.
3. Their attendance for the execution of Statutes. |
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| | |

CHAP. XXI.

Of the jurisdiction of Justices itinerantes in the Principality of Wales.

THese Justices have power to heare and determine all criminall causes, which are called in the Lawes of England, *the Pleas of the Crowne*; and herein they have the same jurisdiction that the Justices have in his Majesties Bench, commonly called the Kings Bench.

They have jurisdiction to heare and determine all civill causes which are called in the Lawes of England, Common Pleas; and doe take knowledge of all fines levyed of lands or hereditaments, without suing out any *Dedimus potestatem*; and herein they have the same jurisdiction that the Justices of the common Pleas doe execute at Westminster.

Also they may heare and determine all Assises upon disseisines of lands or hereditaments, wherein they equall the jurisdiction of the Justices of Assise.

Justices of Oyer & Terminer may heare and determine all notable violences and outrages perpetrated or done within their severall precincts of the Principallirie of Wales.

The Prothonotary his Office is to draw all pleadings, and to enter and engrosse all Records and Judgements in civill causes.

The Clerk of the Crowne his Office is to draw and engrosse all proceedings, arraignements, and judgements in criminall causes.

The

In the disposing of the Judge.

The Marshall, whose Office is to attend the persons of the Judges at their coming, sitting, and going from the Sessions or Court.

The Crier, hee is *tanquam publicus Præco*, to call forth such persons whose appearances are necessary, and to impose silence to the people.

There is a Commission under the great Seale of England to certaine Gentlemen, giving them power to preserve the peace, and to resist and punish all turbulent persons whose misdemeanors may tend to the disquiet of the people; and these bee called the Justices of peace, and every of them may well and truly be called and termed *Eirenarcha*.

The chiefe of them is called *Custos Rotularum*, in whose custody all the Records of their proceedings are resident.

Others there are of that number called Justices of Peace and *Quorum*, because in their Commission they have power to sit and determine causes concerning breach of peace, and misbehaviour; the words of their Commission are conceived thus, *Quorum* such and such, *unum vel duos &c. esse volumus*; and without some one or more of them of the *Quorum*, no Sessions can bee holden: And for the avoyding of a superfluous number of such Justices (for through the ambition of many, it is counted a credit to be burthened with that authority) the Statute of 38. H. 8. hath expressely prohibited that there shall bee but eight Justices of Peace in every County. These Justices doe hold their Sessions quarterly.

These Justices appointed by the L. Keeper.

In every Shire where the Commission of the peace is established, there is a Clerk of the peace for the entring and engrossing of all proceedings before the said Justices. And this Officer is appointed by the *Custos Rotulorum*.

Every Shire hath its Sheriffe, which word being of the Saxon English, is as much to say as *Shire Reeve*, or Minister of the County: His Function or Office is twofold:

1. Ministeriall.

2. Judiciall.

As touching his ministeriall Office, hee is the minister and executioner of all the processe and pre- 34.H.8.cap.16.
cepts of the Courts of Law, and thereof ought to make returne and certificate.

As touching his Judiciall Office, hee hath authority to hold two severall Courts of distinct natures: The one called the *Tourne*, because he keepeth his turne and circuit about the Shire, and holdeth the same Court in severall places, wherein he doth enquire of all offences perpetrated against the common Law, and not forbidden by any Statute or Act of Parliament; and the jurisdiction of this Court is derived from Justice distributive, and is for criminall offences; and is held twice every yeere.

The other is called the County Court, wherein hee doth determine all petie and small causes civill under 40. s. arising within the said County, and thereof it is called the County Court.

The

The jurisdiction of this Court is derived from Justice Commutative, and is held every moneth : The Office of the Sheriffe is annuall, and in the Kings gift, whereof he is to have a Patent.

Every Shire hath an Officer called an Escheator, which is an Office to attend the Kings Revenue, and to seize into his Majesties hands all lands, either escheated goods, or lands forfeited, and therefore is called Escheator ; And hee is to enquire by good enquest of the death of the Kings Tenants, and to whom their lands are descended, and to seize their bodies and lands for Ward, if they bee within age, and is accomptable for the same ; and this Officer is named by the Lord Treasurer of England.

34. H. 8. 20.

There are in every Shire two other Officers called Crowners or Coroners: they are to enquire by inquest in what manner, and by whom every person dyeth of a violent death, and to enter the same of Record ; which is matter criminall, and a plea of the Crowne, and therefore they are called Coroners, or Crowners, as one hath written, because their enquiry ought to be publick *in Corona populi*.

These Officers are chosen by the freeholders of the Shire, by vertue of a writ out of the Chancery, *De Coronatore elegendo* : and of them I neede not to speake more, because these Officers are in use elsewhere.

Forasmuch as every Shire is divided into Hundreds, it is also by the said Statute of 34. H. 8.

cap. 26. ordered that two sufficient Gentlemen or Ycomen shall bee appointed Constables of every Hundred. Constables of the Hundred.

Also there is in every Shire one Gaole or Prison appointed for the restraint of liberty of such persons as for their offences are thereunto committed, untill they shall be delivered by course of law. Gaolers Office.

In every Hundred of every Shire the Sheriffe thereof shall nominate sufficient persons to be Bailiffes of that Hundred, and Underministers of the Sheriffe; and they are to attend upon the Justices in every of their Courts and Sessions.

FINIS.

Also there is in every Shire one Gaol or Prison
 appointed for the detainer of liberty of their per-
 sons for their offences are thereunto committed,
 and they shall be delivered by course of law.
 In every Hundred of every Shire the Sheriff
 thereof shall be sufficient persons to be Bai-
 liffs of the Hundred, and Underministers of the
 Sheriff, and to attend upon the Justices in
 every Hundred and Session.

FINIS.

collected & complete

Mr. B. Quarrier.

Wm. J. J.

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Exm. J. J.

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